

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U 39 M) for Authorization Pursuant to Public Utilities Code Section 851 to Grant Easements for Installation, Operation, Maintenance and Use of Domestic Water Wells.

Application 03-12-015  
(Filed December 8, 2003)

**OPINION AUTHORIZING EASEMENTS ON UTILITY PROPERTY  
UNDER PUBLIC UTILITIES CODE SECTION 851 FOR THE CONSTRUCTION  
OF DOMESTIC WATER WELLS IN SHASTA COUNTY**

Pursuant to Pub. Util. Code § 851, Pacific Gas and Electric Company (PG&E) is authorized to grant water rights easements to seven private property owners in Shasta County for the installation and operation of domestic water wells. This proceeding is closed.

**Background**

Pub. Util. Code § 851 requires a public utility to secure authorization from the Commission before encumbering or transferring any of its properties or rights necessary or useful in the performance of its duties as a public utility. PG&E owns the surface and subsurface water rights and the rights to taking and diverting water for use in generating hydroelectricity in certain areas in the vicinity of Battle Creek (a tributary of the Sacramento River) in Shasta County. PG&E requests authority to transfer limited water rights, in the form of easements, to seven private property owners in Shasta County for the purpose of allowing each to install and operate a water well on their respective properties. The property owners seek to construct single homes on their lots and the wells

are necessary for water service. The Shasta County Department of Resource Management/Planning Division will not issue construction permits for the homes until PG&E grants the water rights easements.

In 1984, PG&E filed an indenture with the Shasta County Recorder stipulating the terms and conditions for granting easements to private property owners for the construction and operation of water wells in the county.<sup>1</sup> The indenture provides that easements must not adversely affect PG&E's electricity service to the general public and limits the number of wells to one per land parcel.

### **Grantees and Properties**

The seven properties subject to this application are located in the unincorporated community of Manton, Shasta County, within the Manton Heights (Private Road) Subdivision, Tract 1523, as recorded on page 79, Book 17 of Maps, Shasta County Records. The property owners, with respective subdivision lot numbers, are listed below.

- |   |        |
|---|--------|
| (1) The Linda Grotkin Irrevocable Trust<br>Hester V. Greene, Trustee<br>43 Great Jones Street<br>New York, NY 10012 | Lot 35 |
| (2) James M. Matkins and Linda D. Matkins<br>6682 Montecito Boulevard<br>Santa Rosa, CA 95409                       | Lot 41 |
| (3) Priscilla Tupper<br>8181 Bonnie Oak<br>Citrus Heights, CA 96610   | Lot 34 |

---

<sup>1</sup> Shasta County Recorder—File #2131010295, filed March 27, 1984, Book 2048, page 212.

- |  |        |
|--|--------|
| (4) Christopher R. Fairley and Diane M. Fairley<br>1016 Camino Ricardo<br>San Jose, CA 95125 | Lot 36 |
| (5) John C. Povey and Patty Povey<br>28145 Highway 36 E<br>Red Bluff, CA 96080               | Lot 37 |
| (6) Thomas J. Hogan and Connie S. Hogan<br>25850 Highway 36 E<br>Red Bluff, CA 96080         | Lot 27 |
| (7) Tina Beresford<br>34320 Love's Creek Lane<br>Manton, CA 96059                            | Lot 32 |

Pursuant to Rule 35 of the Commission's Rules of Practice and Procedure (Rules), all of the above grantees co-signed and support this application.

### **Payment/Ratemaking**

As payment for the easements, PG&E will receive \$491 from each property owner. Each easement limits the quantity of water extracted to one acre-foot per year and the maximum pump capacity to 30 gallons per minute. PG&E does not own the real property related to the easements and therefore no associated book value exists. The water rights subject to this application are associated with PG&E's non-nuclear, hydroelectric generation facilities and are governed by its Utility Generation Balancing Account (UGBA). Any net compensation will be credited to this account.

### **Transaction in the Public Interest**

Pub. Util. Code § 851 requires that transactions involving public utilities shall not be adverse to the public interest. Copies of this application were served on the Shasta County Counsel, California Resources Agency, California Environmental Protection Agency, United States Environmental Protection

Agency, United States Department of the Interior and the Commission's Office of Ratepayer Advocates, among others. No protests or comments opposing this application were received. Granting the easements will not interfere with the operation of PG&E facilities or with the level of service to its customers. Construction and operation of the water wells allows the individual property owners to construct single homes on land they own and is not adverse to the public interest.

### **Environmental Review**

The California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (i.e., grant Section 851 authority) without which the proposed activity will not proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines, Section 15051(b)).

Here, Shasta County (County) is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for the proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project. The specific activities a Responsible Agency must conduct are contained in CEQA Guidelines, Section 15096.

In this application, PG&E requests that the Commission find that the installation, construction, and maintenance of domestic water wells as part of construction of single family homes is categorically exempt from the CEQA pursuant to CEQA Guidelines, Section 15303(b) and (d). Section 15303(b) provides an exemption from CEQA review for a duplex or similar multi-family residential structure totaling no more than four dwelling units. Section 15303(d) provides an exemption from CEQA review for water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction. We find that it is unnecessary to grant this request for exemption from CEQA.

The County as Lead Agency conducted a full environmental review for the development on the lots in the Manton Heights Subdivision, Tract No. 1523, which are at issue relative to the seven easements requested in this application. We prefer to rely on full CEQA review where the Lead Agency has determined it to be warranted. Specifically, in 1982 the County certified a Final Environmental Impact Report (EIR) approving residential development for the Manton Heights Subdivision, Tract No, 1523. By Resolution No. 5593 dated December 9, 1982, the County Planning Commission approved the EIR and on the same date approved the tract map by Resolution No. 5594. The County Planning Commission later modified and extended the tract map by Resolution No. 5794 (dated May 26, 1983) and Resolution No. 6382 (dated January 10, 1985), respectively.

According to correspondence entered into the record from the County Planning Division, the EIR and Resolutions constitute the final discretionary environmental review for the Manton Heights Subdivision. Following certification of the EIR and recording of the tract map, the County issues ministerial building permits for residential construction on lots which is consistent with the subdivision development approved by the EIR. The County

verified that the installation, construction, and operation of residential water wells for the Tract No. 1523 lots specified in this application is consistent with the subdivision development approved in the Final EIR. This construction would now be approved by the County as part of the building permit authorizing the residential development on the Manton Heights lots.

Although the County now issues only ministerial permits for the construction in question, we believe that pursuant to the EIR and recording of the tract map, the County conducted adequate CEQA review applicable to the project activity that would likely result from our approval of this application. Accordingly, we adopt the County's findings and find that CEQA has adequately been conducted for purposes of our approval. The installation, construction, and operation of water wells for the Tract No. 1523 lots is consistent with the subdivision development approved in the EIR.

### **Categorization of Proceeding**

This proceeding was preliminarily categorized as ratesetting and we preliminarily determined that a hearing was unnecessary. Based on the record, we conclude that the proceeding is properly categorized and that a public hearing is unnecessary.

### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Kenneth L. Koss is the assigned Administrative Law Judge in this proceeding.

### **Waiver of Comment Period**

This is an uncontested matter where the decision grants the relief requested. Accordingly, pursuant to Rule 77.7 (f)(2) of the Rules, the 30-day period for public review and comment is being waived.

**Findings of Fact**

1. By this application, PG&E seeks authority under Pub. Util. Code § 851 to grant water rights, in the form of easements, to seven private property owners in the County, for the installation and operation of a water well on each property.
2. The seven property owners all co-signed Application 03-12-015 in support of the easements.
3. PG&E does not own the subject properties, but does own the surface and subsurface water rights.
4. The seven property owners intend to construct single homes on their respective properties. The County will not issue construction permits until the water rights easements are granted.
5. PG&E filed an Indenture on March 27, 1984 with the County Recorder describing the conditions and terms of transferring water rights to private property owners in the county. The indenture requires that any easements shall not adversely affect PG&E's electricity service to the general public and limits the number of wells to one per land parcel.
6. PG&E will receive \$491 from each property owner as payment for the easement and credit any net compensation to its UGBA.
7. Each easement limits the quantity of water extracted to one acre-foot per year and the maximum pump capacity to 30 gallons per minute.
8. The County is the Lead Agency for the project under CEQA.
9. The Commission is a Responsible Agency for the project under CEQA.
10. The County certified a Final EIR for residential development of the Manton Heights Subdivision Tract No. 1523.
11. The easements requested in this application are for seven lots in Tract No. 1523 in the Manton Heights Subdivision.

12. The installation, construction, and operation of water wells for the Tract No. 1523 lots is consistent with the subdivision development approved in the EIR.

13. This is an uncontested matter. No protests or other comments were received opposing this application.

14. The proposed easements do not adversely affect the public interest.

### **Conclusions of Law**

1. The applicant has satisfied the requirements of Pub. Util. Code § 851.
2. The applicant has satisfied the requirements of the Rules.
3. An evidentiary hearing is not required.
4. We find that the County conducted adequate CEQA review for the project activity that would likely occur from approval of this application.
5. We adopt the County's findings and find that CEQA has adequately been conducted for purposes of our approval.
6. Our approval of the transaction is not adverse to the interest or rights of the public.

## **O R D E R**

### **IT IS ORDERED** that:

1. The request of Pacific Gas and Electric Company (PG&E) to grant water rights, in the form of easements, to the seven private property owners named and for the reasons described in this order, is approved.
2. Each grantee shall each pay PG&E the sum of \$491 for granting the water rights easements.
3. The applicant and grantees shall comply with the terms and conditions of the easements.



4. The applicant and grantees shall comply with the terms and conditions for granting water rights to private property owners described in Shasta County Indenture Number 2131010295, recorded with the County Recorder on March 27, 1984, at the request of PG&E.

5. Within 30 days of issuing the grants, PG&E shall file an advice letter with this Commission noticing the completed transfer.

6. PG&E shall record the proceeds from these grants in its Utility Generation Balancing Account.

7. The 30-day comment period is waived, as this is uncontested matter.

8. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.